Alumni Hotel Corporation d/b/a Days Hotel of Southfield *and* Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO. Cases 7–CA–32195, 7–CA–32429, and 7–CA–33027

May 28, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On January 13, 1993, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent filed exceptions and a motion for reconsideration, rehearing, or reopening of the record.[1] The General Counsel filed an answering brief and a motion to strike extra-record material submitted by the Respondent.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the recorc in light of the exceptions, motions, and briefs, and has decided to affirm the judge's rulings, findings, and conclusions[3] and to adopt the recommended Order.

[1] The Respondent, which elected not to be represented at the hearing, seeks to have the Board consider evidence that is not part of the record. The evidence the Respondent attempts to introduce, however, existed prior to the hearing, and the Respondent does not claim that it was unaware of the evidence at that time. Accordingly, the Respondent's motion is denied. *L & J Equipment Co.*, 278 NLRB 485 fn. 3 (1986); *Owen Lee Floor Service*, 260 NLRB 651 fn. 2 (1980). Further, because Exhs. A–E, which are appended to the Respondent's exceptions and motion, were not introduced at the hearing, and thus are not part of the record, we grant the General Counsel's motion to strike them. *S. Freedman Electric*, 256 NLRB 432 fn. 1 (1981).

[2] The General Counsel moves to strike the Respondent's exceptions, claiming that they do not satisfy the requirements of Sec. 102.46(b)(1) of the Board's Rules and Regulations. We agree that the exceptions leave much to be desired in that they are merged into a single document with the Respondent's motion, and do not precisely reference the portions of the judge's decision to which the Respondent excepts. The exceptions do, however, cite transcript testimony to which the Respondent takes issue, thereby apprising the other parties of the substance of the Respondent's exceptions. In these circumstances, we reject the General Counsel's argument that the exceptions should be disregarded.

[3] The Respondent argues that because it has instituted bankruptcy proceedings, the Board is stayed from processing this case under Sec. 362 of the Bankruptcy Code. We disagree. It is well settled that Board proceedings fall within an exception to the automatic stay provisions. *Frayn Printing*, 308 NLRB No. 45 fn. 1 (Aug. 12, 1992) (not reported in Board volumes); *FJN Mfg.*, 305 NLRB 656, 657 fn. 8 (1991).

The Respondent additionally asserts that the parties were at bargaining impasse since the Union ''backdated'' an agreement executed by the Respondent in February 1990. The Board, however, previously rejected this argument in *Days Hotel of Southfield*, 306 NLRB 949 (1992), and this argument is not properly before us.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Alumni Hotel Corporation, d/b/a Days Hotel of Southfield, Southfield, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Linda Hammel, Esq., for the General Counsel.
Martin R. Fine, Esq., for the Respondent Employer.
John G. Adam, Esq., for the Charging Party Union.

DECISION

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges and amended charges were filed in the above proceedings on August 13, October 10, and November 13, 1991, and on March 11, 1992. A consolidated amended complaint issued in Cases 7–CA–32195 and 7–CA–32429 on November 18, 1991. A complaint issued in Case 7–CA–33027 on April 10, 1992. An order consolidating the above proceedings issued on April 16, 1992.

The General Counsel alleges in Cases 7–CA–32195 and 7–CA–32429 that Respondent Employer violated Section 8(5) and (1) of the National Labor Relations Act by failing and refusing to provide Charging Party Union with certain requested information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of an appropriate unit of Respondent's employees. Specifically, the Union had requested, and the Employer failed and refused to provide, certain financial data and records concerning the Employer's business operations. The Union also had requested, and the Employer failed and refused to provide, information pertaining to employee schedules, days and hours worked, and reductions in days and hours worked with respect to specific named employees. In addition, the General Counsel alleges in Cases 7–CA–32195 and 7–CA–32429 that the Employer further violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union over a grievance regarding the employment status of certain employees.

The General Counsel alleges in Case 7–CA–33027 that Respondent Employer violated Section 8(a)(5) and (1) of the Act by bypassing the Union and dealing directly with its employees requiring them to forego a contractual benefit and agree to waive overtime pay for hours worked in excess of 8 hours in a day; by unilaterally ceasing to pay overtime pay for hours worked in excess of 8 hours in a day; by unilaterally ceasing to pay combination pay for employees working in a higher paying classification; and by unilaterally ceasing to pay an employee for 8 hours of work if the employee reports for work and is sent home early. In addition, the General Counsel alleges in Case 7–CA–33027 that the Employer further violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with certain requested information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of an appropriate unit of Respondent's employees. Specifically, the Union had requested, and the Employer failed and refused to provide, a copy of the personnel file of terminated employees; and copies of all agreements and/or waivers of overtime which the Employer had required its em-

ployees to sign. And, finally, the General Counsel alleges in Case 7–CA–33027 that the Employer also violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union over grievances regarding the above changes in terms and conditions of employment.[1]

Respondent Employer, in its answers, denies violating the Act as alleged.

A hearing was held on the issues raised on November 19, 1992, in Detroit, Michigan. Counsel for Respondent Employer did not appear at the hearing, but instead wrote that Respondent ''rests upon its answer and pleadings and upon a copy of the notice of filing of [a] petition in bankruptcy'' and ''hereby puts the National Labor Relations Board to proof of its own case'' (G.C. Exh. 2). Counsel for the General Counsel thereupon presented testimony and documentary evidence in support of the consolidated complaints. On the entire record thus made, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

In *Days Hotel of Southfield*, 306 NLRB 949 (1992), the Board, in agreement with the administrative law judge, found that respondent employer is engaged in the operation of a hotel and convention center, providing lodging, public restaurant, and other related services at its facility in Southfield, Michigan; that it is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; that the charging party union is admittedly a labor organization within the meaning of Section 2(5) of the Act; and that the union represents the following appropriate unit of the employer's employees:

> All employees of Alumni Hotel Corporation D/B/A Days Hotel Of Southfield, excluding maintenance engineers, managerial employees, supervisors, confidential employees, security personnel and other guards, all as defined in the Act.

The Board, in agreement with the judge, further found in *Days Hotel of Southfield*, supra, that the employer violated Section 8(a)(1) and (5) and (d) of the Act by failing to provide the union with requested information necessary for and relevant to the union's performance of its duties as the exclusive bargaining representative of the unit employees and by unilaterally changing the terms and conditions of employment of the unit employees without complying with the requirements of Section 8(d)(3) of the Act and without having first bargained to impasse with respect to the terms and conditions of employment which it implemented.

In the instant case, counsel for the General Counsel offered supplemental proofs with respect to, inter alia, the jurisdictional, unit, and related preliminary allegations of the consolidated complaints. (See Tr. pp. 7–27.) The entire record in this proceeding amply supports the jurisdictional, unit, and related preliminary allegations of the consolidated complaints.

In addition, Vickey Presley, business representative for the Union, testified in the instant case that she has represented the Days Hotel unit employees for about 3 years; she is familiar with the collective-bargaining agreements covering the unit employees; and General Counsel's Exhibit 10 ''is the most recent contract'' between the parties. Presley explained that, in accordance with the terms of the ''contract,'' the term ''combination pay'' means that ''if [employees] work in two different job classifications [they] shall receive the higher rate of pay''; ''if [employees] work more than eight hours in one day they shall receive time and a half''; and ''if [full time employees] report to work . . . and are sent home [they] shall receive four hours pay if [they] do no work'' and ''eight hours pay'' ''if [they] work a half a day.''

Presley identified Bonnie Bobola as the Employer's general manager with ''authority to discipline employees.'' Previously, Tom Ferrell was the general manager and Bobola served as the executive housekeeper and ''supervisor over housekeeping employees.'' Presley identified Chuck Cekala as the executive chef ''with authority to discipline the employees.'' Presley noted that the ''contract'' covers ''the front desk people, waiters, waitresses, bartenders, housekeeping, kitchen employees [except the chef], bellman, valet, [and] banquet servers,'' and excludes ''maintenance engineers.'' And, she explained that the Employer employs employees ''in the same classifications as were employed in 1990 and 1991'' and the ''Management structure of the Hotel is the same as it was in 1990 and 1991.''

Presley testified that ''there [was] a dispute between the Hotel and Local 24 about the payment of health insurance''; that ''issue'' was addressed by the Board in the prior proceedings; and about August 1991 ''the Hotel and Local 24 entered into an interim agreement with respect to the issue of health insurance.'' (See G.C. Exh. 12.) Presley explained the ''rules of eligibility'' for health insurance benefits ''under the previous contract,'' as follows:

> As long as you were a steady employee who worked four days or more per week you were considered full time which gave you benefits for insurance as long as you were employed over a year.

Presley recalled that ''a dispute'' later arose between the Union and the Employer ''concerning the eligibility for health insurance purposes of certain employees.'' On September 5, 1991, Presley wrote General Manager Bonnie Bobola enclosing a grievance filed by the Union and requesting her ''response forthwith in accordance with the terms of the contract.'' (See G.C. Exh. 13.) The ''group grievance'' enclosed with this letter stated:

> The Employer has unilaterally changed the status of full time /steady employees to part time /extra employees thus denying them contractual benefits . . . .

Presley did not ''get any immediate response from the Hotel to this grievance.'' Bobola said that ''she would have to refer [Presley] to Mr. Fine,'' the Hotel's president. Fine, however, never ''contacted'' Presley, and Bobola never ''met to discuss this grievance.''

Consequently, on September 13, Presley wrote Bobola (G.C. Exh. 14):

> Per our conversation on September 12 . . . you informed me you were unable to have a grievance meeting regarding the class action grievance . . . . At this

[1] The consolidated complaints were further amended at the hearing. See G.C. Exh. 32.

> time I am requesting how many days and hours were worked in the last three months by the following employees? Have the following employees' hours been reduced? Have the following employees' schedules been changed? And why is the Company denying benefits to these people.
>
> 1. Jim Martell
> 2. William Price
> 3. Mary Spinks
> 4. Mary Ann Tinnes
> 5. Paul Hamway
>
> I would appreciate your response by Friday September 27 . . . .

On September 16, Presley again wrote Bobola (G.C. Exh. 15):

> I am requesting information on the following employees:
>
> 1. Walter Paige
> 2. Staci Walling
> 3. Lori Bante
>
> How many days and hours were worked during the last three months by the above employees? Have the above employees' hours been reduced? Have these employees' schedules been changed? Why is the Hotel denying benefits to Walter Paige?
>
> It is my understanding that Staci and Lori were hired in as part time employees but have worked four or more days per week since they were hired. These two employees will be eligible for insurance benefits within the next couple of months when they complete their one year waiting period. I would like this matter resolved before Staci and Lori become eligible for insurance and are denied by the Hotel because they were classified as part time instead of full time employees . . . .
>
> I would appreciate your response by Monday September 30 . . . .

On October 23, a letter from a regional investigator was sent to Martin Fine of Days Hotel (G.C. Exh. 16) reciting, inter alia:

> Pursuant to your request enclosed please find copies of the letters sent to you on September 13 and 16, 1991 by Vickey Presley of Local 24 in which she requested certain information relevant to a class action grievance she recently filed. Also attached is a copy of a letter sent to you on September 17 . . . in which Ms. Presley requested names, addresses, dates of hire, and classifications for all bargaining employees relevant to her representation of the bargaining unit employees employed by your establishment . . . .

Martin Fine of Days Hotel responded to Presley on October 28 (G.C. Exh. 17), stating, inter alia:

> With regard to your letter of September 13 . . . as you well know the Union agreement expired on July 31, 1990 and was not renewed. There is no collective bargaining agreement in effect and therefore no grievance procedure in effect.
>
> For your information with respect to the five employees listed in your letter, with respect to Mr. Martell he has always been a part time employee, and with respect to Mr. Price, Ms. Spinks, Ms. Tinnes and Mr. Hamway such employees are all listed as banquet/steady employees and their schedules are solely determined by the business available; since there is little business there is little work.
>
> Since all five of these people are not full time employees they are not eligible for any benefits that are available for full time employees . . . .

In addition, Martin Fine of Days Hotel further responded to Presley on October 28 (G.C. Exh. 18), stating, inter alia:

> With regard to your letter of September 16 . . . [as] you well know the Union agreement expired on July 31 . . . and was not renewed. There is no collective bargaining agreement in effect and therefore no grievance procedure in effect.
>
> With respect to Walter Paige he is a banquet/steady and only works when there is business in the banquet hall and does not have a regular schedule. With respect to Traci Wahling [sic] and Lori Bante both were hired as part time employees and have worked as part time employees.
>
> Furthermore, as you well know the collective bargaining agreement expired on July 31, 1990 (as held by the NLRB) and has not been renewed.
>
> The Union has refused to meet and negotiate a new collective bargaining agreement. There is no collective bargaining agreement presently in effect and the paragraph that you quoted no longer exists.
>
> We will be happy to meet with the Union at any time to negotiate a new collective bargaining agreement.

Presley testified that Fine did not ''at any time offer to meet . . . with respect to [her] grievance about the denial of health insurance to certain employees which [she] had sent to the Hotel on September 5 . . . .'' And, on November 11, Presley wrote Fine (G.C. Exh. 19):

> Your October 28 letters simply do not respond to my information request. . . . In addition, your statement that there is no ''grievance procedure in effect'' is simply wrong. Days Hotel has an obligation to meet and process grievances with Local 24. If you are unwilling to meet over grievances please advise me. . . . Moreover, you are simply misstating the facts when you state that the Union ''has refused to meet and negotiate a new contract.'' At the last negotiation session, you advised Bruce Miller and myself that you would provide us with financial information and then you would contact us about setting up contract negotiations. You have not provided us with the information. Nor have you contacted Bruce Miller about negotiations.

Presley by letter dated December 18 filed a grievance with Bonnie Bobola on behalf of terminated employee Mark Thompson (G.C. Exh. 20). In addition, Presley by letter

dated December 26 filed a grievance on behalf of terminated employee Betty Sanders (G.C. Exh. 21). Presley by letters dated January 2 and 10, 1992, wrote Bobola with respect to the above grievances, stating (G.C. Exhs. 22 and 23):

> I have not received a response for the grievance . . . . [W]e have not had any grievance meetings . . . to settle the grievances filed by the employees for almost two years. . . . At this time I am requesting a copy of [the personnel files for both named employees] . . . .

Presley later received two letters (G.C. Exh. 24) stating the Employer's reasons for terminating the two employees and again claiming that ''no grievance procedure is in effect.'' Presley never received the requested information pertaining to the two terminated employees. Moreover, the Employer made no attempt to meet and bargain with respect to the terminations of the two employees.

Further, Presley had ''reason to believe that the Hotel's Management was asking employees to forego'' overtime benefits under the ''expired contract.'' Presley on February 12, 1992, wrote Fine ''requesting a copy of all agreements signed by the employees'' (G.C. Exh. 25). She received no ''response.'' The Hotel had not given her any ''notice of a plan to ask employees to forego overtime after eight ours'' and the parties had not bargained over or agreed upon such a waiver.

On February 21, Presley filed with Bobola grievances for employees Suzanne Crawford, Gary Reed, Robert Gregory, and William Price (G.C. Exh. 26). Crawford's grievance pertained to ''the combination rate of pay''; Reed and Gregory's grievances pertained to ''not receiving report in pay''; and Price's grievance pertained to his termination. Presley received no response to these grievances. The Hotel has not attempted to meet or bargain over these grievances.

Presley next explained that ''since the [collective bargaining agreement] expired on July 31, 1990,'' she attended about three ''sessions'' in an attempt to negotiate a successor agreement. Presley recalled that ''it was the Union's position that [the contract] had automatically renewed itself for a year''; ''Fine's position was that it did not''; the administrative law judge's decision in the prior proceeding issued on September 13, 1991; and the parties met thereafter on one occasion in May 1992. Another meeting was ''scheduled'' for May 22, but the Union was unable to meet that day and wrote the Employer (G.C. Exh. 27):

> Local 24 is still preparing all proposals and meeting with the shop stewards prior to our meeting. I would suggest that we meet after June 8, 1992. Please advise me of your proposed dates.

Presley testified that the Hotel thereafter never suggested a new meeting date. In the meantime, the Hotel never gave the Union any notice that ''it intended to abolish its practice of paying so-called report in pay to the employees'' or ''the payment of combination pay to the employees'' or ''the payment of overtime or time and a half after 8 hours of work in a single day.'' Further, the Union has received no notice to the effect that the Hotel has sought to set aside any provisions of the expired contract in the pending bankruptcy proceedings.

Presley next recalled that during a meeting of the parties in June 1991 the Union's attorney ''had requested . . . financial records from Mr. Fine.'' The Union's attorney ''needed . . . a month by month profit and loss statement, more detailed information . . . .'' The Hotel never furnished this ''financial information.'' And, the Union had written the Employer on May 2, 1991 (G.C. Exh. 29):

> The purpose of this letter is to formally notify you that [the Union] wishes to open the existing collective bargaining agreement for the purpose of negotiating certain changes.
>
> We would appreciate your sending us the following information for each employee in the bargaining unit: name, classification, wage rate, and any fringe benefits which are not enumerated in the collective bargaining agreement.
>
> Please contact Ms. Vickey Presley . . . to arrange a date to commence negotiations. In the event that negotiations for a new agreement are not concluded before the expiration date of the present contract, the contract will terminate on said date.

Fine responded on May 13 (G.C. Exh. 30). And, on May 28 the attorney for the Union wrote Fine (G.C. Exh. 31):

> Your letter of May 13, 1991 has been referred to me. I will be handling contract negotiations. I will not rehash with you the questions of the collective bargaining agreement. The fact is that I have met with you on a number of occasions.
>
> At my meetings with you I requested that you submit financial statements. In light of your poverty plea that was and continues to be an appropriate request. At each meeting when this issue was raised your response was evasive but the fact remains we still do not have a financial statement. Please provide this information as well as that information requested [on May 2] . . . .
>
> I am not available on the dates you propose. I suggest that you contact Vickey Presley as you were advised to do . . . on May 2 . . . to schedule a meeting.

Suzanne Crawford is employed by the Hotel. She first started working there in 1978. Her current job title is ''combination cook.'' The kitchen has a ''pantry cook'' who ''usually prepares the cold foods,'' and a ''hot cook'' who ''usually prepares the hot items.'' In January 1992 Chef Chuck Cekala

> said that our business was slow . . . in order for the people in the kitchen to get their 40 hours we would have to combine hot and cold . . . we would combine . . . and do both . . . .

This ''change'' affected Crawford and coworkers Betty Sanders and Donald Preston. Crawford asked Cekala about a pay raise since this ''change'' would increase her duties. Cekala said that ''Marty Fine was definitely not giving any raises.'' However, ''under the Union wage structure . . . a cook on the hot line [would] normally receive more money than a pantry cook doing cold food.'' Crawford later discussed this subject with General Manager Bobola and Union Representative Presley and ultimately received a raise.

Crawford also explained that ''in years past'' ''after eight hours [of work in a given day] you will receive time and a half.'' Chef Cekala asked her in early 1992 ''to give up that benefit''; he presented her a document to sign ''to waive the overtime.'' She refused to sign. Since January 1992 she and her coworkers have been paid ''straight time'' in such situations instead of the usual premium pay. Other employees were similarly approached by management ''to sign similar documents.'' Crawford noted that the chef makes up employee work schedules; is the head of the kitchen; and has authority to discipline employees including sending them home.

Finally, Crawford identified General Counsel's Exhibit 28 as a notice posted at the Hotel about October 1990, stating, inter alia:

> The collective bargaining agreement expired on July 31, 1990. As a result all benefits previously provided pursuant to the expired collective bargaining agreement were eliminated as of July 31, 1990. The benefits which are no longer in effect unfortunately include health and welfare benefits, salary increases and all other benefits provided pursuant to the expired contract . . . .

Garry Reed also works in the Hotel kitchen. He has been ''classified'' as full time ''since day one'' in 1984. Since about January 1992 he has not been getting 8 hours of work each day on a regular basis. On days he has worked he has only been paid for the specific number of hours worked instead of ''for the full eight hours.'' Other employees have also experienced this same elimination of prior benefits, including Robert Gregory. He too was asked to waive overtime benefits by the chef. He refused to sign a written waiver.

John Adam, attorney for the Union, testified that in his dealings with Martin Fine of Respondent Employer ''over the last several years,'' Fine ''has always pled poverty . . . the Hotel was losing significant sums of money since late 1989 and 1990.'' The Union therefore requested from the Employer ''basically . . . a month by month breakdown as to expenditures, losses, incurred by Alumni Hotel . . . how much did they pay out for salaries, benefits, to other suppliers, how much they brought in, . . . what was paid for salaries to officers . . . .'' The requested financial information has not been supplied. (See G.C. Exh. 31.)[2]

Discussion

Respondent is an employer engaged in commerce and the Charging Party Union is a labor organization as alleged. The Union has been and is the exclusive bargaining agent of an appropriate unit of the Employer's employees as alleged. See *Days Hotel of Southfield*, 306 NLRB 949 (1992). Company President Fine, General Manager Bobola, and Executive Chef Cekala have been and are supervisors and agents of the Employer under the Act. As noted above, the jurisdictional, unit, and other related preliminary allegations of the consolidated complaints have been carefully documented and sufficiently established here. Further, the uncontroverted and credited evidence of record also makes it clear that the Employer has continued in its unlawful refusal to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act by making unilateral changes in unit terms and conditions of employment; by refusing to supply the Union with necessary and relevant requested information; by bypassing the Union and unlawfully dealing directly with employees concerning mandatory subjects of bargaining; and by failing to meet and bargain with the Union concerning employee grievances and work disputes.

Under settled principles of labor law, ''an employer is obligated to provide a union with requested information if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative''; the issue in such a case is ''whether the requested information had probable and potential relevance to the union's statutory obligation to represent employees within the contractual units''; and, ''whatever the eventual merits of the [union's] claim . . ., [it is] entitled to the requested information under the discovery type standard announced in *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967), to judge for [itself] whether to press [its] claim in the contractual grievance procedure or before the Board or Courts . . . .'' See *Maben Energy Corp.*, 295 NLRB 149, 152 (1989), and cases cited.

And, as restated and explained in *Electrical Energy Services*, 288 NLRB 925, 931–932 (1988):

> Information about terms and conditions of employment of employees actually represented by a union is presumptively relevant and is required to be produced . . . . Requested information that is not so apparently related to a union's bargaining obligations is not presumptively relevant [and] there must be a demonstration of relevance . . . . It is not the Board's function in this type of case to pass on the merits of the union's claim that respondent breached its collective bargaining agreement or . . . committed an unfair labor practice . . . . [T]he union need not demonstrate actual instances of contractual violations before the employer must supply information . . . . Nor must the bargaining agent show that the information which triggered its request is accurate, nonhearsay, or even ultimately reliable . . . . The Board's only function in such situation is in acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities . . . .

However, as explained in *Atlanta Hilton & Tower*, 271 NLRB 1600 (1984):

> The rule . . . is different for profit data or other aspects of an employer's financial condition. The union must show a specific need for the information in each particular case; profit data will not be required merely because it would be ''helpful'' to the union . . . . An employer may, however, provide justification for requiring profit data to be furnished by claiming financial inability to meet the union's demands . . . .

It is also settled law that an employer violates its statutory duty to bargain in good faith when it makes ''unilateral changes in conditions of employment under negotiation'';

[2] I credit the uncontroverted and substantiated testimony of Presley, Crawford, Reed, and Adam as summarized above.

for, as the court of appeals explained in *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968), an employer is only privileged to unilaterally implement such changes that ''are reasonably comprehended within his preimpasse proposals'' ''after bargaining to an impasse, that is, after good faith negotiations have exhausted the prospects of concluding an agreement''; there must be ''no realistic possibility that continuation of discussion at that time would be fruitful . . . .'' Of course, a union's ''refusal to meet and bargain'' with an employer ''over terms for a new contract prior to the expiration of the old contract'' may justify such ''unilateral'' action by the employer. See *AAA Motor Lines*, 215 NLRB 793 (1974).

The Board noted in *Beitler-McKee Optical Co.*, 287 NLRB 1311 (1988):

> Payment to a contractual pension fund is the type of term and condition of employment that survives the expiration of a contract . . . a contractually established grievance resolution system also survives the contract's expiration . . . we also find that the respondent violated Section 8(a)(5) and (1) of the Act by its unilateral change in employee group health insurance policies, a benefit clearly constituting a term and condition of employment . . . .

And, finally, as explained in *Allied-Signal*, 307 NLRB 752, 753 (1992):

> It is well settled that the Act requires an employer to meet and bargain exclusively with the bargaining representative of its employees, and that an employer who deals directly with its unionized employees . . . regarding terms and conditions of employment violates Section 8(a)(5) and (1) of the Act . . . . Direct dealing need not take the form of actual bargaining . . . . Going behind the back of the exclusive bargaining representative to seek the input of employees on a proposed change in working conditions . . . plainly erodes the position of the designated representative.

In the instant case, the Union made repeated requests for necessary and relevant information which were ignored or denied by the Employer. Thus, Union Representative Presley recalled that during a meeting of the parties in June 1991 the Union's attorney ''had requested . . . financial records from [Company president] Fine.'' The Union's attorney ''needed . . . a month by month profit and loss statement, more detailed information . . . .'' The Hotel never furnished this ''financial information.'' And, earlier, on May 28, the attorney for the Union wrote Fine (G.C. Exh. 31):

> At my meetings with you I requested that you submit financial statements. In light of your poverty plea that was and continues to be an appropriate request. At each meeting when this issue was raised your response was evasive but the fact remains we still do not have a financial statement. Please provide this information as well as that information requested [on May 2] . . . .

John Adam, attorney for the Union, testified that in his dealings with Company President Fine ''over the last several years,'' Fine ''has always pled poverty . . . the Hotel was losing significant sums of money since late 1989 and 1990.'' The Union therefore requested from the Employer ''basically . . . a month by month breakdown as to expenditures, losses, incurred by Alumni Hotel, . . . how much did they pay out for salaries, benefits, to other suppliers, how much they brought in, . . . what was paid for salaries to officers . . . .'' The requested financial information has not been supplied.

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> The Employer has unilaterally changed the status of full time /steady employees to part time /extra employees thus denying them contractual benefits . . . .

On September 13, Presley wrote Bobola (G.C. Exh. 14):

> Per our conversation on September 12 . . . you informed me you were unable to have a grievance meeting regarding the class action grievance . . . . At this time I am requesting how many days and hours were worked in the last three months by the following employees? Have the following employees' hours been reduced? Have the following employees' schedules been changed? And why is the Company denying benefits to these people.
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> 1. Jim Martell
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> 3. Mary Spinks
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> 5. Paul Hamway

On September 16, Presley again wrote Bobola (G.C. Exh. 15):

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> 1. Walter Paige
> 2. Staci Walling
> 3. Lori Bante
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Hotel President Fine responded to Presley on October 28 (G.C. Exh. 17), stating, inter alia:

> With regard to your letter of September 13 . . . . as you well know the Union agreement expired on July 31, 1990 and was not renewed. There is no collective bargaining agreement in effect and therefore no grievance procedure in effect.

In addition, Fine further responded to Presley on October 28 (G.C. Exh. 18), stating, inter alia:

> With regard to your letter of September 16 . . . [as] you well know the Union agreement expired on July 31 . . . and was not renewed. There is no collective bargaining agreement in effect and therefore no grievance procedure in effect.

The Union, on this record, has clearly provided the required justification for its request for company financial data and records, as alleged in paragraph 10(a) of the consolidated complaint in Cases 7–CA–32195 and 7–CA–32429. Further, the information requested in the Union's letters of September 13 and 16, as alleged in paragraphs 10(b) and (c) of the complaint, was essentially presumptively relevant. In any event, this record amply establishes the required relevancy and necessity for this information in order for the Union to fulfill its role as bargaining agent for the unit employees involved. The Employer, in violation of Section 8(a)(5) and (1) of the Act, refused to provide this requested information. The Employer, in further violation of Section 8(a)(5) and (1), also refused to meet over a grievance filed by the Union on September 5 protesting Employer unilateral changes in terms and conditions of employment, as alleged in paragraph 10(d) of the complaint. The expiration of the collective-bargaining agreement did not, under settled law, relieve the Employer of this obligation.

Turning to the complaint allegations in Case 7–CA–33027, the uncontroverted and credited evidence of record, as detailed above, makes it clear that the Employer during late 1991 and early 1992 unilaterally ceased to pay unit employees overtime for hours worked in excess of 8 hours in a day; unilaterally ceased to pay unit employees combination pay when working in a higher paying classification; and unilaterally ceased to pay unit employees their so-called report in pay. These unilateral changes in terms and conditions of employment were not made after impasse or waiver by the Union. I reject counsel for Respondent's allegation that the Union ''has failed and refused to legitimately bargain'' (G.C. Exh. 1(u)) as contrary to the uncontroverted and credited evidence of record. In sum, Respondent Employer was continuing in its unlawful refusal to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act, as alleged in paragraph 12 of the complaint.

In like vein, as detailed above, Respondent Employer, in further derogation of its bargaining obligation, bypassed the Union and dealt directly with the unit employees requiring them to forgo a contractual benefit and agree to waive overtime for hours worked in excess of 8 hours in a day, as alleged in paragraph 11 of the complaint. And, Respondent Employer again refused to comply with union requests for personnel files of terminated employees who were the subjects of pending grievances, and requests for agreements and/or waivers of overtime benefits which the Employer had required its employees to sign, as alleged in paragraph 15 of the complaint. This requested information was plainly relevant and necessary for the Union to perform its representational duties. Finally, the Employer refused to meet with the Union over grievances filed pertaining to its unilateral changes in mandatory subjects of collective bargaining and the employment status of a unit employee, as alleged in paragraph 18 of the complaint.

In sum, Respondent Employer has continued to violate Section 8(a)(5) and (1) of the Act as alleged. And, as recently restated by the Board in *Lambeth Corp*., 309 NLRB No. 107 fn. 1 (Nov. 11, 1992) (not reported in Board volumes):

> It is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition . . . .

CONCLUSIONS OF LAW

1. Respondent Employer is an employer engaged in commerce as alleged.

2. The Charging Party Union is a labor organization as alleged.

3. The Charging Party Union is the exclusive bargaining agent of the following appropriate unit of Respondent Employer's employees:

> All employees of Alumni Hotel Corporation D/B/A Days Hotel Of Southfield, excluding maintenance engineers, managerial employees, supervisors, confidential employees, security personnel and other guards, all as defined in the Act.

4. Respondent Employer violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Charging Party Union with certain requested information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of an appropriate unit of Respondent's employees. Specifically, the Union had requested, and the Employer failed and refused to provide, certain financial data and records concerning the Employer's business operations. The Union also had requested, and the Employer failed and refused to provide, information pertaining to employee schedules, days and hours worked, and reductions in days and hours worked with respect to specific named employees. The Union also had requested, and the Employer failed and refused to provide, a copy of the personnel file of terminated employees; and copies of all agreements and/or waivers of overtime which the Employer had required its employees to sign. These requests for information were, as found above, made orally about May or June 1991 and in letters dated May 28 (G.C. Exh. 31), September 13 (G.C. Exh. 14), September 16, 1991 (G.C. Exh. 15), and January 2 (G.C. Exh. 22), January 10 (G.C. Exh. 23) and February 12, 1992 (G.C. Exh. 25).

5. Respondent Employer further violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union over a grievance regarding the employment status of certain employees and to meet with the Union over grievances regarding certain unilateral changes in terms and con-

ditions of employment; by bypassing the Union and dealing directly with its employees requiring them to forego a contractual benefit and agree to waive overtime pay for hours worked in excess of 8 hours in a day; by unilaterally ceasing to pay overtime pay for hours worked in excess of 8 hours in a day; by unilaterally ceasing to pay combination pay for employees working in a higher paying classification; and by unilaterally ceasing to pay an employee for 8 hours of work if the employee reports for work and is sent home early.

6. The unfair labor practices found above affect commerce as alleged.

REMEDY

Respondent Employer, to remedy the unfair labor practices found above, will be directed to cease and desist from engaging in such conduct and like or related conduct and to post the attached notice. Respondent Employer will also be directed to provide the Union with the requested information as described in paragraphs 10(a), (b), and (c) of the consolidated complaint in Cases 7–CA–32195 and 7–CA–32429, and the requested information as described in paragraphs 12(a), (b), and (c) of the complaint in Case 7–CA–33027. These requests for information were, as found above, made orally about May or June 1991 and in letters dated May 28 (G.C. Exh. 31), September 13 (G.C. Exh. 14), September 16, 1991 (G.C. Exh. 15), and January 2 (G.C. Exh. 22), January 10 (G.C. Exh. 23) and February 12, 1992 (G.C. Exh. 25).

Respondent Employer will also be directed to rescind the unilateral changes in terms and conditions of employment found unlawful herein and make whole any unit employees who have been detrimentally affected by the Employer's unlawful unilateral action. See *Days Hotel of Southfield*, 306 NLRB 949 (1992). Backpay will be computed as provided in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). And, Respondent Employer will also be directed to, on request, meet and bargain in good faith with the Union as the exclusive bargaining agent of the unit employees with respect to wages, hours, and other terms and conditions of employment and embody any understanding reached in a signed agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Alumni Hotel Corporation d/b/a Days Hotel of Southfield, Southfield, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union, Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO–CLC as the exclusive bargaining agent of its employees in the appropriate unit described below, by failing and refusing to provide the Union with certain requested information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of an appropriate unit of Respondent's employees. Specifically, the Union had requested, and the Employer failed and refused to provide, certain financial data and records concerning the Employer's business operations. The Union also had requested, and the Employer failed and refused to provide, information pertaining to employee schedules, days and hours worked, and reductions in days and hours worked with respect to specific named employees. The Union also had requested, and the Employer failed and refused to provide, a copy of the personnel file of terminated employees; and copies of all agreements and/or waivers of overtime which the Employer had required its employees to sign. These requests for information were, as found in the Board's decision, made orally about May or June 1991 and in letters dated May 28 (G.C. Exh. 31), September 13 (G.C. Exh. 14), September 16, 1991 (G.C. Exh. 15), and January 2 (G.C. Exh. 22), January 10 (G.C. Exh. 23) and February 12, 1992 (G.C. Exh. 25). The appropriate bargaining unit consists of:

> All employees of Alumni Hotel Corporation D/B/A Days Hotel Of Southfield, excluding maintenance engineers, managerial employees, supervisors, confidential employees, security personnel and other guards, all as defined in the Act.

(b) Failing and refusing to bargain in good faith with the Union as the exclusive bargaining agent of its employees in the above appropriate unit by failing and refusing to meet with the Union over a grievance regarding the employment status of certain employees and to meet with the Union over grievances regarding certain unilateral changes in terms and conditions of employment; by bypassing the Union and dealing directly with its employees requiring them to forgo a contractual benefit and agree to waive overtime pay for hours worked in excess of 8 hours in a day; by unilaterally ceasing to pay overtime pay for hours worked in excess of 8 hours in a day; by unilaterally ceasing to pay combination pay for employees working in a higher paying classification; and by unilaterally ceasing to pay an employee for 8 hours of work if the employee reports for work and is sent home early.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with the requested information as described in paragraphs 10(a), (b), and (c) of the consolidated complaint in Cases 7–CA–32195 and 7–CA–32429, and the requested information as described in paragraphs 12(a), (b), and (c) of the complaint in Case 7–CA–33027. These requests for information were, as found by the Board, made orally about May or June 1991 and in letters dated May 28 (G.C. Exh. 31), September 13 (G.C. Exh. 14), September 16, 1991 (G.C. Exh. 15), and January 2 (G.C. Exh. 22), January 10 (G.C. Exh. 23) and February 12, 1992 (G.C. Exh. 25).

(b) Rescind the unilateral changes in terms and conditions of employment found unlawful in the Board's decision and make whole any unit employees who have been detrimentally affected by the Employer's unlawful unilateral action, with interest as provided in the Board's decision.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) On request meet and bargain in good faith with the Union as the exclusive bargaining agent of the unit employees with respect to wages, hours, and other terms and conditions of employment and embody any understanding reached in a signed agreement.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Southfield, Michigan facility copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with the Union, Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO–CLC as the exclusive bargaining agent of our employees in the appropriate unit described below, by failing and refusing to provide the Union with certain requested information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of an appropriate unit of our employees. Specifically, the Union had requested, and we failed and refused to provide, certain financial data and records concerning our business operations. The Union also had requested, and we failed and refused to provide, information pertaining to employee schedules, days and hours worked, and reductions in days and hours worked with respect to specific named employees. The Union also had requested, and we failed and refused to provide, a copy of the personnel file of terminated employees; and copies of all agreements and/or waivers of overtime which we had required our employees to sign. These requests for information were, as found in the Board's Decision, made orally about May or June 1991 and in letters dated May 28 (G.C. Exh. 31), September 13 (G.C. Exh. 14), September 16, 1991 (G.C. Exh. 15), and January 2 (G.C. Exh. 22), January 10 (G.C. Exh. 23) and February 12, 1992 (G.C. Exh. 25). The appropriate bargaining unit consists of:

> All employees of Alumni Hotel Corporation D/B/A Days Hotel Of Southfield, excluding maintenance engineers, managerial employees, supervisors, confidential employees, security personnel and other guards, all as defined in the Act.

WE WILL NOT fail and refuse to bargain in good faith with the Union as the exclusive bargaining agent of our employees in the above appropriate unit by failing and refusing to meet with the Union over a grievance regarding the employment status of certain employees and to meet with the Union over grievances regarding certain unilateral changes in terms and conditions of employment; by bypassing the Union and dealing directly with our employees requiring them to forgo a contractual benefit and agree to waive overtime pay for hours worked in excess of 8 hours in a day; by unilaterally ceasing to pay overtime pay for hours worked in excess of 8 hours in a day; by unilaterally ceasing to pay combination pay for employees working in a higher paying classification; and by unilaterally ceasing to pay an employee for 8 hours of work if the employee reports for work and is sent home early.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them under Section 7 of the Act.

WE WILL provide the Union with the requested information as described in paragraphs 10(a), (b), and (c) of the consolidated complaint in Cases 7–CA–32195 and 7–CA–32429, and the requested information as described in paragraphs 12(a), (b), and (c) of the complaint in Case 7–CA–33027. These requests for information were, as found by the Board, made orally about May or June 1991 and in letters dated May 28 (G.C. Exh. 31), September 13 (G.C. Exh. 14), September 16, 1991 (G.C. Exh. 15), and January 2 (G.C. Exh. 22), January 10 (G.C. Exh. 23) and February 12, 1992 (G.C. Exh. 25).

WE WILL rescind the unilateral changes in terms and conditions of employment found unlawful in the Board's decision and make whole any unit employees who have been detrimentally affected by our unlawful unilateral action, with interest as provided in the Board's decision.

WE WILL on request meet and bargain in good faith with the Union as the exclusive bargaining agent of the unit employees with respect to wages, hours, and other terms and conditions of employment, and embody any understanding reached in a signed agreement.

ALUMNI HOTEL CORPORATION D/B/A DAYS HOTEL OF SOUTHFIELD